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No. 91-277

In the Supreme Court of the United States

OCTOBER TERM, 1991

ADD VENTURES, LTD., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner forfeited certain unpatented mining claims by failing to make the filings with state and federal authorities that are required by Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744.

2. Whether Section 314 is constitutional as applied to this case.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A4) is not reported. The district court did not issue a written opinion; its judgment and excerpts from an oral statement explaining its decision are reprinted, respectively, at Pet. App. A5-A6 and Pet. App. A39-A48. The decision of the Interior Board of Land Appeals (Pet. App. A7-A27) is reported at 95 I.B.L.A. 44. The decision of the Bureau of Land Management (Pet. App. A28-A38) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on May 15, 1991. The petition for a writ of certiorari was filed on August 12, 1991. The jurisdic-

tion of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1744, requires persons holding unpatented mining claims on public lands to make annual filings with both state and federal authorities in order to preserve their claims. For claims located prior to the statute's enactment, Section 314(a)(1), 43 U.S.C. 1744(a)(1), requires a claimant to file each year, in the state office in which the claim is recorded,

> either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [*sic*] a detailed report provided by section 28-1 of title 30, relating thereto.

Section 314(a)(2) of FLPMA, 43 U.S.C. 1744(a)(2), requires the claimant to file with the Bureau of Land Management, no later than December 30 of each year, "a copy of the official record of the instrument filed or recorded" with state authorities.[1] Under Sec-

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[1] Although the statute calls for the filing of "a copy of the official record of the instrument filed or recorded" with the appropriate state or local recordation office, 43 U.S.C. 1744(a)(2), the Department of the Interior has determined that in some States it is not possible for a claim owner to make a timely filing in the state or local office and to obtain a copy of that instrument in time to meet the statutory deadline for filing the instrument with BLM. 47 Fed. Reg. 56,301 (1982). Consequently, the Department has promulgated a regulation providing that a claim owner must file with BLM a copy of the instrument which "was or will be filed," 43 C.F.R. 3833.2-2(a) (1988), or "which [has] been or will be filed for record,"

tion 314(c), 43 U.S.C. 1744(c), "[t]he failure to file such instruments as required by [43 U.S.C. 1744(a)(1)-(2) and (b)] shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof * * *."

The purpose of Section 314, as this Court noted in *United States* v. *Locke*, 471 U.S. 84, 87 (1985), is to "rid federal lands of stale mining claims and to provide federal land managers with up-to-date information that allows them to make informed land management decisions." [2] In *Locke*, a case in which a claimant was deemed to have forfeited a valuable claim by missing the federal filing deadline by one day, this Court made clear that the claimant's actual intention is immaterial. "Specific evidence of intent to abandon is simply made irrelevant by § 314(c)," the Court held, and "the failure to file on time, in and of itself, causes a claim to be lost." 471 U.S. at 100. The Court also upheld the constitutionality of the statute. The forfeiture provision is a "reasonable, if severe, means of furthering [the statutory] goals,"

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43 C.F.R. 3833.2-3(b) (1988), with the State. (Since the time relevant to this case, the regulations have been amended in a manner not material to the questions presented. Our citations are to the regulations in force at the time relevant to this case.)

[2] Traditionally, the extent and duration of any rights to unpatented mining claims have been governed by local law. See 30 U.S.C. 23, 26, 28. Claimants had long been required to make filings with local authorities to establish compliance with the annual work requirement set forth in 30 U.S.C. 28. Section 314 of FLPMA builds on this practice and assures that federal authorities will have easy access to copies of instruments filed with state authorities.

the Court explained, and the statute does not "take" property within the meaning of the Fifth Amendment. *Id.* at 106, 107.

2. Petitioner Add Ventures, Ltd., is a limited partnership that held a number of unpatented mining claims on public lands in Alaska. Petitioner did not file its affidavit of 1984 assessment work with the State or the BLM until January 1985, approximately one month after the statutory deadline. Accordingly, the BLM issued a decision declaring the claims abandoned pursuant to Section 314(c). Pet. App. A28-A38.[3]

Petitioner took an administrative appeal to the Interior Board of Land Appeals. Petitioner argued, *inter alia*, that three letters it sent to BLM in 1984, responding to the agency's requests for documentation establishing a chain of title to the claims, should be treated as "notice[s] of intention to hold the claim[s]" within the meaning of the statute. See Pet. App. A11-A15. The IBLA rejected that contention and upheld BLM's decision. *Id.* at A19-A22.

Although the statute does not specify the form that a notice of intention must take, the IBLA explained, it does not follow "that any document sent to BLM from which intent might be inferred is sufficient." Pet. App. A20. Rather, the document "must be filed with BLM as a notice of intent"; "[i]t must indicate that the claim owner continues to have an interest in the claim"; "[i]t must * * * be a copy of the document which was or will be recorded in the local office where the claim's location notice has been recorded"; and it "must * * * include 'a description

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[3] The BLM decision also noted that the lands at issue are now closed to entry. Pet. App. A30. The consequence, as in *Locke*, 471 U.S. at 91, is that petitioner cannot again attempt to locate its claims on those lands.

of the location of the mining claim sufficient to locate the claimed lands on the ground.' " *Id.* at A20-A21. Petitioner's 1984 letters to BLM did not satisfy those requirements, the IBLA concluded, because they were not filed or recorded with state authorties and they were not sent to BLM to be filed as notices of intent. *Id.* at A21.

3. Petitioner brought this action in the United States District Court for the District of Alaska seeking judicial review of the IBLA's decision. Ruling on cross-motions for summary judgment, the district court ruled that the 1984 letters could be regarded as defective notices of intention that were sufficient to preserve petitioner's claims. Relying on 43 C.F.R. 3833.4(b), the court ordered BLM to provide petitioner with 30 days to correct any defects in those documents. Pet. App. A5-A6; see *id.* at A39-A48.

4. In an unpublished memorandum decision, the court of appeals reversed. Pet. App. A1-A4. The court held that "letters evidencing an intent to hold a claim are not sufficient to comply with [43 U.S.C.] 1744(a)(2)." *Id.* at A2-A3. The court also noted that petitioner's letters "were not filed with the local recordation office at all," as required by 43 U.S.C. 1744(a)(1); and it upheld the agency's interpretation of the statute to require forfeiture of a claim in these circumstances as reasonable. *Id.* at A3, A4. The court also rejected petitioner's contention that the statute is unconstitutional as applied, finding that *Locke* "directly or implicitly rejected" that contention. *Id.* at A4. "[T]he forfeiture provision serves the legitimate purpose of apprising the BLM of mining claims on federal land," the court explained, and the "automatic forfeiture" prescribed by the statute is "rationally related to that purpose." *Ibid.*

ARGUMENT

1. Petitioner contends that the letters it sent to BLM in 1984 should be deemed "notices of intention to hold [its] claims" for purposes of Section 314's filing requirements.

It is undisputed that the instruments by which petitioner actually sought to comply with Section 314(a) in 1984, the affidavits of assessment work that it submitted to state authorities and BLM in January 1985, were filed out of time. See Pet. 8. Although petitioner sent letters to BLM in 1984 from which a subjective intention to hold the claims might have been inferred, those letters did not satisfy the unambiguous requirements of the statute.

By its terms, Section 314(a) creates two filing requirements, both of which must be satisfied each year. First, a claimant must file in the appropriate state or local recordation office an affidavit of assessment work or a notice of intention to hold its claims. 43 U.S.C. 1744(a)(1). Second, the claimant must file with BLM "a copy of the official record of the instrument filed or recorded" with the State. 43 U.S.C. 1744(a)(2). Petitioner failed to satisfy either requirement. In 1984, it made no filing whatsoever in the local recording office. Moreover, the only documents that petitioner sent to BLM in 1984—letters responding to requests for information on the chain of title to the claims—were not copies of instruments that were or could have been filed with state authorities (see Gov't C.A. Br. 11), nor did they "indicate that they were sent to BLM to be filed as notices of intent" (Pet. App. A21). Under the mandatory terms of Section 314(c), therefore, petitioner must "be

deemed conclusively" to have abandoned the unpatented claims at issue.[4]

Contrary to petitioner's contention (Pet. 26-28), nothing in *Locke* casts any doubt on that conclusion. The Court's observation that Section 314 "imposes the most minimal of burdens on claimants," in that "they must simply file a paper once a year indicating that the required assessment work has been performed or that they intend to hold the claim," 471 U.S. at 106, does not remotely suggest that any "paper" filed with either state or federal authorities is sufficient. The import of the Court's statement is only that literal compliance with the statute is not onerous. Elsewhere in its opinion, the Court squarely rejected the proposition that "substantial compliance" is sufficient to preserve claims from forfeitures mandated by Section 314 (471 U.S. at 102):

> Congress has made it unnecessary to ascertain whether the individual in fact intends to aban-

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[4] Petitioner contends (Pet. 27-28) that the letters should be regarded as "defective" notices for purposes of the proviso to Section 314(c), which states that "it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof." The agency has consistently construed that provision, however, to excuse only defects "under other Federal laws," and not FLPMA itself. Cf. *Middlesex County Sewerage Auth.* v. *National Sea Clammers Ass'n*, 453 U.S. 1, 15-16 (1981) ("It is doubtful that the phrase 'any statute' includes the very statute in which this statement was contained."). That interpretation was previously upheld by the Ninth Circuit. *Red Top Mercury Mines, Inc.* v. *United States*, 887 F.2d 198, 206 (1989).

Even if the word "defective" were not limited by the phrase "under other Federal laws," it would not alter the result in this case. Petitioner made no filing with state authorities, defective or otherwise, in 1984, and the letters it sent to BLM were not notices of intent at all.

> don the claim, and there is no room to inquire whether substantial compliance is indicative of the claimant's intent—intent is simply irrelevant if the required filings are not made.

2. Petitioner also argues (Pet. 29-36) that the application of Section 314 to this case constituted an unconstitutional taking of its claims. *Locke* forecloses that contention. See 471 U.S. at 103-110. There, the Court held that the forfeitures prescribed by Section 314 are not "takings" of property within the meaning of the Fifth Amendment, because they result from avoidable failures to comply with the filing requirements rather than from governmental action (471 U.S. at 107):

> [I]t was [the] failure to file on time—not the action of Congress—that caused the property right to be extinguished. Regulation of property rights does not "take" private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed.

The Court also held that Section 314's filing requirements, together with the forfeiture provision, are such "reasonable regulatory restrictions." It explained that the statute's purposes—"to rid federal lands of stale mining claims and to provide for centralized collection by federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims"—are "clearly legitimate." 471 U.S. at 105-106. The forfeiture provision, the Court continued, "is a reasonable, if severe, means of furthering these goals." *Id.* at 107.

Locke's reasoning was not, as petitioner suggests (Pet. 34-36), limited to the requirement of a filing with BLM under 30 U.S.C. 1744(a)(2). Indeed, the

two filing requirements work together in serving the statute's purposes. In keeping with the role that local law has played in the recognition of unpatented mining claims, see note 2, *supra*, the first subsection requires claimants to make regular filings in the state offices where those interests are recorded. The second requirement assures that federal managers of public lands will have easy access to copies of the instruments claimants have filed with the States. It is not irrational for Congress to have favored that system over the regime implicit in petitioner's position—in which federal managers would be forced to determine whether any paper submitted to them in a given year was indicative of an intent to preserve a claim and would be left to speculate whether such a document (or any other) had been filed with state authorities. In any event, petitioner did not comply with either of the applicable requirements; in order to prevail, therefore, he would have to show that both are unconstitutional.[5]

3. There is no conflict between the court of appeals' decision in this case and either *Jackson* v. *Robertson*, 763 F.2d 1176 (10th Cir. 1985), or *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981). In those cases, as petitioner concedes

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[5] As this Court noted in *Locke*, the statute also "provides [claimants] with all the process that is their constitutional due." 471 U.S. at 108. As this case reflects, that process includes an administrative determination of a claimant's compliance with the filing requirements, followed by administrative and judicial review. Petitioner does not and cannot suggest that those procedures have deprived it of an opportunity to present factual or legal contentions material to the statutory requirements. The fact that forfeitures under other statutes are effected through different procedures does not suggest that unpatented mining claims receive "less protection" than other interests in property; nor does it give rise to any issue of equal protection. See Pet. 37.

(Pet. 33-34), the Tenth Circuit merely recognized that the Department of the Interior has promulgated regulations requiring claimants to provide more information in their Section 314 filings than the statute itself prescribes and that a forfeiture may not be based on a failure to provide information required only by the regulations.[6] In this case, the agency and the court of appeals determined that petitioner failed to make the filings required by the statute itself. Pet. App. A2-A3, A20-A21. Nothing in *Jackson* or *Topaz Beryllium* indicates that the Tenth Circuit would overlook such an omission.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[6] That distinction is reflected in 43 C.F.R. 3833.4 (1988), the regulation on which the district court relied. That regulation provides that "[t]he failure to file *the information* required in [specified regulations which supplement the statutory requirements] shall not be deemed conclusively to constitute an abandonment of the claim or site, but *such information* shall be filed within 30 days of receipt of a decision from the authorized officer calling for *such information*." 43 C.F.R. 3833.4(b) (1988) (emphasis added). The regulation does not purport to excuse a failure to make the basic filings required by the statute.

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